

Visa Contracting, Inc. and International Brotherhood of Electrical Workers, Local Union 363, AFL-CIO. Case 2-CA-28178

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On April 30, 1998, Administrative Law Judge Eleanor McDonald issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Visa Contracting, Inc., Nanuet, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Bert Pearlstone, Esq., for the General Counsel.

Kenneth J. McGuire, Jr., Esq., of Troy, New York, for the Respondent.

Steven Rockafellow, of New York City, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried on 3 days between July 10 and September 12, 1996. Thereafter, the parties engaged in lengthy settlement discus-

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In affirming the judge's decision, we find that the reasons advanced by the Respondent for laying off employees Connor, Damiani, and Hippler; discharging Connor; and refusing to reinstate Damiani and Hippler on their unconditional offer to return to work after a strike were pretextual, in that they were either false or not in fact relied on in making those decisions. See *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enf'd. 705 F.2d 799 (6th Cir. 1982). This finding is consistent with the Board's analysis in *Wright Line*, 251 NLRB 1083 (1980), approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Concerning Connor's discharge in particular, we find no merit in the Respondent's argument that it relied in part on its belief that Connor was responsible for dirt getting into a circuit box. Damiani, according to his own credited testimony, actually was at fault. There is nothing in the record to support the Respondent's contention that it had any reason to believe that Connor was to blame.

We further note, contrary to the Respondent's exceptions, that the judge made no finding as to Mike Leo's supervisory status and did not rely on Leo's statements to support her analysis and conclusions.

sions, but no settlement was reached. An Order issued on July 21, 1997, directing the parties to show cause why the hearing should not be closed and a time set for the filing of briefs. On August 5, 1997, the record was closed and the parties were directed to file briefs no later than September 12, 1997. After extensions of time requested by the parties, briefs were filed on October 6, 1997.

The complaint alleges that Respondent, in violation of Section 8(a)(1) and (3), laid off employees Michael Connor, Patrick Damiani, and Thomas Hippler, discharged Connor, and failed to return Damiani and Hippler to work after a strike. The Respondent denies that it engaged in any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with a mailing address at P.O. Box 303, Nanuet, New York 10954, has been engaged in the business of construction renovations for residences and commercial buildings at jobsites located in New York State. Annually, Respondent derives gross revenues in excess of \$50,000 from its provision of services to firms, including Gold's Gym, which are directly engaged in interstate commerce. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Brotherhood of Electrical Workers, Local 363, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

1. Background

Many of the facts in this case are not in dispute. Respondent Visa Contracting was the general contractor on a project to construct Gold's Gym in a location that had previously been used for another commercial purpose. Phillip Visaggio, Respondent's owner, had begun by bidding on small tasks for the gym project and had eventually taken over the whole job. Michael Connor, an experienced journeyman electrician and a long-time member of Local 363, answered a newspaper advertisement and was hired by Visaggio on Saturday, January 21, 1995. Connor was paid \$12 per hour. On that same day, a helper named Frank DaBenigno began work. Connor informed Visaggio that he knew other electricians who wanted to work and eventually Patrick Damiani and Thomas Hippler were hired. Damiani and Hippler were also journeymen electricians and members of Local 363. Visaggio was unaware of the union affiliation of his three new employees.

The documentary evidence shows that another journeyman electrician, Richard Luizzo, had worked for Respondent for the first 2 weeks of January at \$25 per hour. Luizzo did not work for Respondent again until Monday, February 6.

On January 31, Connor, Damiani, Hippler, and DaBenigno met with Steven Rockafellow, an agent of the Union. The men all signed authorization cards for the Union and they discussed plans to attain a contract with Respondent. They believed that they had a majority among the electricians employed by Visa.

Rockafellow mailed a letter dated January 31, 1995 to Visaggio informing him that Connor, Damiani, and Hippler are members of Local 363 "and are presently engaging in organizing activities protected by Sec. 7 of the National Labor Relations Act. Please be further advised that threats and retaliation to an employee engaged in such activity is unlawful . . ."

It is undisputed that when Visaggio received this letter he became upset. Connor testified that Visaggio came to the worksite and showed him the letter, asking what it was and telling Connor that he did not want the Union and that Connor had known when he took the job that it was a nonunion job. Hippler testified that Visaggio came to the building letter in hand and said, "what is this, what is this shit?" Then Visaggio approached Connor and he heard Visaggio raise his voice and say, "I don't need any fucking Union." Damiani recalled that Visaggio came in yelling, "what the hell is this, what the fuck is this letter," and that he walked over to Connor waving the letter and saying there would be no union on the job. Visaggio testified that when he received Rockafellow's letter he yelled and screamed and said "fuck." Visaggio acknowledged that he was in shock and that he felt betrayed. Visaggio bemoaned the fact that on the first big job he had obtained for his company he was "set up." Visaggio testified that he thought, "why me?"

Michael Leo is Phillip Visaggio's cousin. Connor testified that Leo was in charge of the Gold's Gym job when Visaggio was not present. Leo kept the employees' time records, helped coordinate the job, and he had keys to the gang box of tools. Damiani testified that Leo was the foreman on the job and that he ran the job to an extent. Leo made sure that the workers wrote all their hours correctly. Visaggio told Damiani on his first day that if he had any trouble he should speak to Leo. Hippler testified that Leo recorded the time that the men arrived and left the job and he recorded the need for materials. When Visaggio was not present, Leo was in charge. Visaggio testified that Leo filled in wherever he was needed; Leo could do electrical, plumbing, sheet rock, and other construction work. Leo did not testify herein.

2. The layoff

On February 2, the day that Visaggio received Rockafellow's letter informing him of the employees' organizing activities, Connor, Damiani, and Hippler ate lunch at a delicatessen near the worksite. While the three named union supporters were seated at a table, Leo came over and asked the men why they were doing this to Visaggio. Leo said that the men knew they were not on a union job. He stated that Visaggio had plenty of work for them and that they could work as long as they wanted. Leo told the men not to push the union issue and he promised them a \$1-an-hour raise if they did not tell the Union anything. Leo said that they would be out in the street and would not have a job because Visaggio did not want the Union and that there would not be a union. Hippler testified that after lunch Leo came up to him at the jobsite and told him to stay away from Connor and Damiani. He said that those two were digging themselves a grave but that if Hippler kept quiet he could stay busy with Visaggio.

Rockafellow also made an appearance at the deli that day. He had received a telephone call from Visaggio earlier in the day in response to his letter. During the telephone conversation, Visaggio told him that the men knew his was a nonunion job and that they shouldn't have come to work for him if they wanted the Union. Visaggio asked what he could do to make this problem go away. Rockafellow replied that he would meet

with Visaggio some time. Then Damiani telephoned Rockafellow to tell him that Visaggio was very angry and upset. Rockafellow went to the deli at lunchtime and he spent some time with the three union members while they ate. After they left to return to work, he met Leo and Visaggio standing in the delicatessen. Visaggio told Rockafellow that he would not "put up with this shit, if these guys want a union, I'm just going to get rid of them, I'm not going to tolerate this." When Rockafellow asked whether Visaggio would fire the men because they wanted the Union, Visaggio said that he would. Rockafellow repeated his question and then Visaggio said he would not take any action until he spoke to his attorney. Visaggio said that the men knew that Gold's Gym was a nonunion job and he said that he would not be a union shop. Rockafellow said it was the employees' right to have the Union, and eventually he and Visaggio drove to the union hall to meet with assistant business manager John Mariah. Rockafellow stated that he wanted Respondent to sign a collective-bargaining agreement, but Visaggio said he had already bid the job and could not "go union." No specific union demands were discussed. Rockafellow told Visaggio that he could be a union contractor and run a profitable business. The meeting ended without any resolution.

At the end of the day on February 2, Visaggio laid off the three union supporters. He told Connor that he had to lay them off because he could not fire them and he did not want the Union. When Connor pointed out that there was still a lot of work to do, Visaggio said he did not care if he had to work 24 hours per day, he and his cousin would finish the job. Visaggio gave no other explanation to Connor for the layoff. Hippler testified that Visaggio did not give him a reason for the layoff. When Hippler learned of the layoff, he went to the printroom with Visaggio in order for the three union supporters to show Visaggio what work they had completed. Both Hippler and Damiani recalled that Damiani asked Visaggio if he had spoken to the Union. Visaggio replied that he had and that the Union wanted Respondent to become a union shop. Damiani asked Visaggio why he was laying them off. Visaggio said that he had to lay the men off and that he could not fire them. Damiani said there was a ton of work left to be done. Visaggio got upset and said he had a right to run his own business; he said "fuck the Union, I can't have the Union, I can't afford to be Union." Connor, Hippler, and Damiani all testified that when Visaggio discussed the layoff with them he did not mention scheduling conflicts with the other trades that were performing work at the gym. Visaggio testified that the men asked for a reason when he laid them off, and he replied that there was no work until further notice. He may have mentioned the Union during this conversation.

On February 3, 1995, after consulting with legal counsel, Visaggio wrote to Rockafellow as follows:

I am in receipt of your letter of January 31, 1995, and was surprised to learn of the three men's organizing activity. I am personally on the job site every day, and your letter was the first notice I had of such activity. In fact, I specifically advised each of these three men that this was not a union job, and they each told me that they were not affiliated with any union, and preferred to work non-union.

I recognize their rights to organize, and have not nor will not take any action to discourage protected activity. I

am enclosing copies of letters sent this date advising these workers of their work resumption dates. . . .

On February 3, Visaggio sent identical letters to each laid-off employee assuring him that Respondent recognized his right to engage in organizing activity and stating that "the recent layoff was in no way related to your activities, but rather was dictated by jobsite scheduling conflicts with other trades." Each of the employees was told that work would resume on Thursday, February 9, 1995, and that he should report on that day or be considered as having resigned his position.

David Cirin, the owner of the subcontractor which installed the air conditioning and heating systems on the Gold's Gym job, was called to testify by Respondent. Cirin testified that he began work the first week of February and completed the job sometime in March. Cirin stated that while his crew was cutting through the roof the electricians could not work. However, Cirin did not specify when the roof cuts were taking place and there is thus no competent evidence linking the roof cuts to the layoff of Connor, Hippler, and Damiani. Moreover, Respondent's records show that helper DaBenigno and nonunion electrician Richard Liuzzo worked full time during the layoff of the three union member electricians. Respondent did not show what work Liuzzo did nor specify why the roof cuts did not interfere with the presence of Liuzzo and DaBenigno on the job.

On February 3, 1995, Rockafellow filed the initial unfair labor practice charge in the instant case alleging that the layoff of Connor, Damiani, and Hippler was discriminatory. On the same day, Rockafellow wrote to Visaggio advising him that Local 363 had been authorized by a majority of his electrical employees and requesting voluntary recognition of the Union. On February 6, Visaggio telephoned Rockafellow and told him that Respondent would not voluntarily recognize Local 363 and that the Union would have to go through "proper channels." The Union filed a representation petition on February 8, stating the number of unit employees as four.

3. Resumption of work and subsequent strike

Connor, Damiani, and Hippler returned to work on February 9. All three men observed that a good deal of electrical work had been done in their absence. Damiani testified in detail as to the tasks that had been completed and gave his opinion that there was enough work to keep two men busy for a whole week. Some of the work had been done wrong and had to be fixed. Hippler testified in great detail as to the work that had been performed in his absence. He had begun some of the work before the layoff and it had been completed by someone else. During the layoff, someone had incorrectly wired an area and Hippler and Damiani redid the work on February 10. Hippler testified that before the layoff, Connor had run about 60 feet of the wrong size pipe, and during the layoff someone else had completed the area continuing to use the incorrect size of pipe. This problem was corrected after the layoff. Connor testified that during the layoff wiring had been pulled for all the outlet circuits but that it had been done improperly. He and Hippler and Damiani spent 1 day fixing the problem.

When the three union members returned to work after the layoff, they wore union buttons. Connor put up signs that said, "Vote Union Yes." On February 10, Damiani handed some signs to other men during a coffeebreak and he observed that Connor gave cards to members of other trades. Leo took one of the cards and threw it in the garbage. Hippler saw Leo grab a

card that Connor had given to an employee in another trade and fling it to the floor. Leo told Connor to worry about the electricians and not the carpenters, "The carpenters will have a job and you won't." Connor testified that during a break, he gave Rockafellow's card to another worker. Leo took it out of the man's hand and threw it on the floor saying, "Don't pay attention to these guys, you don't want nothing to do with these Union guys, they are not going to be working, they will be on the street." After Connor hung a few signs saying that union workers do better work, Visaggio told him, "I don't want no fucking Union here, there's going to be no Union here." Visaggio then said that he did not need Connor sabotaging his job. Connor told Visaggio to get his finger out of his face and that he was there to work and not to sabotage the job. After this exchange, they all went back to work. Later that day, while Connor was working on a circuit, Visaggio gave Connor a check and told him that he was fired. When Connor asked why, Visaggio gave him a letter listing a number of reasons for the discharge. These were:

Generally poor work performance. Tardiness reporting to work, abuse of work breaks, especially lunch. Inability to perform work as specified. Ran incorrect pipe installation, at great cost to employer to correct. Generally disruptive on work site, interferes with other workers. Damaged electrical panel by allowing construction rubble to get in.

Visaggio testified that at the beginning Connor's work was satisfactory; he gained confidence in Connor's ability and gave him more and more responsibility. According to Visaggio, Connor's work continued to be acceptable until Visaggio "approached him about the Union stuff. There was a total different work attitude . . . once I approached him about the Union letter." Visaggio testified that he terminated Connor based on notes made in his book. However, the book produced by Respondent contained a bare listing of the hours of work of all of the employees on the jobsite and it did not show that Connor was late to work as stated in the discharge letter, nor did it contain references to other failings on the part of Connor. Visaggio testified that the work performance of all three Union members was not satisfactory once they returned from the layoff. For example, Visaggio stated that Damiani and Hippler installed a number of ceiling fixtures that required two screws at each end to secure them but that the two employees only put one screw at each end in some of the fixtures. Nevertheless, Visaggio testified, he would have continued to employ Damiani and Hippler. In answer to Visaggio's criticism, Damiani testified that when he and Hippler hung the ceiling fixtures they only put in one screw at each end as a temporary measure until the fixtures could be wired. He believed that it saved time to hang the fixtures with only one screw at first, a two-man job, and then have one man go back and wire the fixtures and put in the missing screws all at the same time.

Charles Hebeka, the owner of Gold's Gym, was called by Respondent to testify concerning supposed misdeeds of Connor. Hebeka testified that Connor asked him for a tee shirt and said that he could make the job go smoother. I do not credit Hebeka because his memory was selective and he seemed to be primed to testify one way—against Connor. For example, Hebeka stated that he heard Connor use vulgarities to women, but he gave no examples of this behavior, he blamed Connor for dirt in the fuse box which caused the lights to go out but he did

not say how he knew that this was Connor's fault, and he testified that none of the signs Connor made mentioned the Union. Hebeke stated that Connor was protesting that Respondent hired Mexicans or illegal aliens. In fact, all of the evidence, including the documentary evidence, shows that Connor made signs and picketed with signs that mentioned Local 363. Furthermore, Respondent's letter discharging Connor did not assert that Connor was discharged for asking Hebeke for a tee shirt or for using vulgarities to women.

Connor testified that a temporary electrical circuit box had been installed on the construction site but that the circuits were overloaded and the breakers were constantly tripping. In addition, the panel box was wide open in violation of Code. Connor stated that the box was inadequate and a different one should have been provided. Because the box was open when it should have been a closed box, it was liable to become clogged with debris. A few days before Visaggio discharged him, Connor had told Visaggio to supply a new box. Connor stated that on construction sites it is common to have power outages because of the temporary and changing nature of the existing electrical system. Damiani testified that he had been assigned to cut a hole through a concrete wall. In preparation for this work, Damiani put scaffolding up against the wall so that it covered the top of the electrical circuit box. Some dirt got into the box and later some breakers tripped. Connor came over and told him that the breakers were tripping, and Damiani pulled them out and cleaned them. Damiani stated that he was responsible for the dust.¹

On February 13, 1995, the Monday after Connor was fired, Damiani and Hippler went on strike. Along with Connor and Rockafellow, they picketed the jobsite for part of 1 day wearing picket signs that stated that Visa had been charged with unfair labor practices. Rockafellow sent Visaggio a letter informing him that Damiani, Connor, and Hippler were picketing to protest Respondent's unfair labor practices. On February 14, Rockafellow sent Visaggio a letter stating that the three men were ending their strike and that they unconditionally offered to return to work at their former positions. The Postal Service attempted to deliver this letter twice but it was refused both times. The letter had \$2.32 postage affixed to it and it was marked 20 cents postage due. On February 22, the unopened envelope was returned to Rockafellow. On February 24, Rockafellow tried to hand deliver the letter to Visaggio in the parking lot of the jobsite, but Visaggio would not take it saying that he did not want anything from him. Rockafellow told Visaggio that the letter contained an offer to end the strike and return the employees to work. Visaggio then took Rockafellow to an office where they called Visaggio's counsel on the telephone, a person Visaggio identified as "Ken." When Rockafellow asked Ken when the men should return to work, Ken said that Respondent would not take them back. Ken said the men had been insubordinate and walked off the job and that there had been no strike. When Rockafellow asked whether the striking employees had been replaced, Ken replied that the men had not really been on strike and that they were no longer needed. None of the three union members worked for Respondent again.

¹ I find that Connor and Damiani are more credible witnesses than Visaggio and I credit them whenever there is a conflict in the testimony.

Visaggio testified that the job was not completed until the end of March or beginning of April.

B. Discussion and Conclusions

All of the credible evidence in the instant case compels the conclusion that Respondent laid off Connor, Hippler, and Damiani because they supported the Union, and that Respondent discharged Connor and refused to take back striking employees Hippler and Damiani because they supported the Union.

Visaggio admitted that he felt angry, upset, and betrayed when he learned that Connor, Hippler, and Damiani were attempting to organize his company. He used obscenities and yelled at the employees and he told them that the job was nonunion. Visaggio did not want the Union and stated repeatedly that he would not have a Union on his job. Indeed, Visaggio told Union Agent Rockafellow that if the men wanted the Union he would just get rid of them. On the very day that Visaggio first learned that three of his employees supported the Union, Respondent laid off the three union members while retaining Da-Benigno, the helper whose support of the Union had not been disclosed. In addition, nonunion member electrician Liuzzo worked during the layoff. Visaggio stated that he would work round the clock himself doing electrical work rather than continue to employ the union members. When Connor, Hippler, and Damiani returned from the layoff, they saw that a lot of electrical work had been done in their absence. Work which they had started had been finished and new work had been done. There is no credible evidence actually linking the necessity of making roof cuts to accommodate the air conditioning system with the timing of the layoff. Respondent's evidence that the men were laid off to avoid conflicts with work performed by other trades is vague and unpersuasive. I conclude that Respondent laid off Connor, Hippler, and Damiani because they supported the Union. Respondent thus violated Section 8(a)(1) and (3) of the Act.

When Connor began openly organizing following his return to work, Respondent promptly fired him, citing reasons which I find to be pretextual. Upon his return, Connor put out signs advocating the Union, and Visaggio told him that, "I don't want no fucking Union here." Visaggio said that he did not need Connor sabotaging the job. The list of reasons for Connor's discharge do not accord with the credible evidence presented. First, the charge of generally poor work performance is not borne out by the testimony. Visaggio blamed Connor for dirt in the circuit box but the reliable testimony shows that this was Damiani's responsibility. The 60 feet of the wrong size pipe put in by Connor was dwarfed by the far greater amount of such pipe put in by someone else (possibly Visaggio himself), during the layoff. The alleged tardiness is not supported by any time-sheets or other records. The cited interference with other workers is supported only by evidence that during his breaks Connor gave union literature to other employees. Finally, I find it significant that Visaggio testified that Connor was satisfactory until he became an open union supporter. Indeed, this happened to the other union members as well; Visaggio was unhappy with the way Damiani and Hippler went about handing the ceiling fixtures although he testified that he would have continued to employ them. It is clear to me that in Visaggio's view any employee who supported the Union was betraying him and setting him up. In accordance with his view, Visaggio went about ridding his worksite of such employees. I find that

Respondent discharged Connor because he supported the Union. Respondent thus violated Section 8(a)(1) and (3) of the Act.

Finally, after the two remaining union supporters struck in protest against Connor's discharge, Respondent refused to take them back when the Union made an unconditional offer to return to work on their behalf. The evidence is clear that on February 13, Connor, Hippler, Damiani, and Rockafellow picketed the Gold's Gym job site with signs accusing Respondent of committing unfair labor practices. The pickets were protesting Connor's discriminatory discharge on the preceding workday. It is undisputed that on February 24, Rockafellow told Visaggio that he had mailed him an unconditional offer to return to work on behalf of the striking employees. On that day, Rockafellow discussed this offer with Respondent's counsel who asserted that the men had not been on strike and that they were no longer needed. It is evident that the men were on strike. Further, Visaggio testified that the job was not completed until late March. I conclude that Respondent refused to reinstate the strikers upon their unconditional offer to return to work in violation of Section 8(a)(1) and (3) of the Act.

CONCLUSION OF LAW

By laying off Michael Connor, Patrick Damiani, and Thomas Hippler, by discharging Michael Connor, and by failing to return Patrick Damiani and Thomas Hippler to work upon their unconditional offer to return to work after a strike, Respondent violated Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off Michael Connor, Patrick Damiani, and Thomas Hippler, and having discriminatorily discharged Michael Connor, and having discriminatorily refused to return Patrick Damiani and Thomas Hippler to work, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of layoff and discharge or date of refusal to return striking employees to work to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Visa Contracting Co., Inc., Nanuet, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off, discharging, and refusing to reinstate employees because they support International Brotherhood of Electrical Workers, Local 363, AFL-CIO, or because they engaged in a protected concerted strike.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Connor, Patrick Damiani, and Thomas Hippler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Michael Connor, Patrick Damiani, and Thomas Hippler whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs and discharges and notify the employees in writing that this has been done and that the layoffs and discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"³ to all employees in the electricians unit who were employed by the Respondent at its Gold's Gym jobsite at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

³ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT lay off, discharge, and refuse to return you to work after a protected strike or otherwise discriminate against any of you for supporting International Brotherhood of Electrical Workers, Local 363, AFL–CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board’s Order, offer Michael Connor, Patrick Damiani, and Thomas Hippler full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Michael Connor, Patrick Damiani, and Thomas Hippler whole for any loss of earnings and other benefits resulting from their layoff and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board’s Order, remove from our files any reference to the unlawful layoffs and discharges of Michael Connor, Patrick Damiani, and Thomas Hippler, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the layoffs and discharges will not be used against them in any way.

VISA CONTRACTING CO., INC.